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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

**ABU YOUSUF and MD.
ROKONNURZZAMAN,**

Plaintiffs,

vs.

**LONGFENG CORPORATION
dba/aka NEW XO MARKET and
PARTYPOKER, GUOWU LI, XU
GUIQING, FELOTEO V. RANADA
dba N.V.M. ENTERPRISES, jointly
and severally,**

Defendants.

Civil Case No. 1:21-cv-00015

**PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANT FELOTEO V. RANADA'S
MOTION FOR SUMMARY JUDGMENT**

Date: March 23, 2023

Time: 10:00 a.m.

Chief Judge: Hon. Ramona V. Manglona

COME NOW Plaintiffs Abu Yousuf and Md. Rokonnurzzaman, by undersigned counsel, and pursuant to the Court's Order Directing Plaintiffs to File a Response to Defendant Ranada's Motion for Summary Judgment dated February 14, 2023 [ECF No. 61], hereby submit Plaintiffs' Response in Opposition to Defendant Feloteo V. Ranada's Motion for Summary Judgment filed on February 13, 2023 [ECF No. 58] in this matter, as follows:

1 Defendant Feloteo V. Ranada's ("Mr. Ranada") motion for summary judgment failed
 2 to demonstrate the absence of a genuine dispute of material fact that would entitle him to
 3 judgment as a matter of law. Fed. R. Civ. P. 56(a). Specifically, Ranada's said motion failed
 4 to show that there is no genuine dispute regarding the asserted employment relationship (or
 5 lack of it) between him (Mr. Ranada) and the Plaintiffs.

6 The Fair Labor Standards Act ("FLSA") very clearly provides that an "employer"
 7 includes "any person acting directly or indirectly in the interest of an employer in relation to
 8 an employee . . ." 29 U.S.C. § 203(d). Hence, whether Ranada is acting directly or indirectly
 9 in the interest of either NVM Enterprises or his co-defendants, he is a joint employer and
 10 must comply with the requirements of FLSA. *Id.*

11 **I. FACTUAL BACKGROUND AND/OR**
 12 **PROFFERED STATEMENTS OF UNDISPUTED FACTS**

13 1. Plaintiffs Abu Yousuf and Md. Rokonnurzzaman (collectively "Plaintiffs") were
 14 formerly employed by Defendants Longfeng Corporation doing business variously as New
 15 XO Market and Partypoker ("Longfeng"), Guowu Li ("Mr. Li"), Xu Gui Xing ("Ms. Xu"),
 16 and Feloteo V. Ranada doing business as NVM Enterprises. (SAC at 3 ¶ 10-11; *Id.* at 7 ¶¶
 17 44-45 [ECF No. 33]).^{1/}

18 2. Longfeng owns and operate a grocery store (New XO Market) and an adult game
 19 room business (Partypoker) in Saipan, CNMI. (*Id.* at 3 ¶ 15).

20
 21
 22 ^{1/} In his Answer (ECF No. 45) to Plaintiffs' Second Amended Complaint for Violation of the Fair
 23 Labor Standards Act ("SAC" [ECF No. 33]), Mr. Ranada does not "fairly respond to the substance of the
 allegation" or does not respond at all – to this allegation in the SAC; hence, it is deemed admitted. *See*
and compare Fed. R. Civ. P. 8(b)(2); Fed. R. Civ. P. 8(b)(6).

1 3. Mr. Ranada, doing business as NVM Enterprises, provided labor and manpower
2 services to businesses, including Longfeng. (*Id.* at 2 ¶ 4; *id.* at 7 ¶¶ 44-45).^{2/}

3 4. Mr. Ranada assigned and/or daily posted Plaintiffs either as security guards and/or
4 baggers at New XO Market and Partypoker gameroom facilities. (*Id.* at 7 ¶ 45).^{3/}

5 5. Plaintiff Yousuf worked for Longfeng from on and between April 7, 2018 and
6 February 19, 2021. (*Id.* at 3 ¶ 10; *Id.* at 8 ¶¶ 51-52).^{4/}

7 6. Plaintiff Rokonnurzzaman worked for Longfeng from on and between May 26,
8 2018 and January 20, 2019. (*Id.* at 3 ¶ 11; *Id.* at 10 ¶ 57).^{5/}

9 7. NVM Enterprises, formerly a sole proprietorship, registered in the name of Nenita
10 V. Marquez (hence, the initials “N.V.M.”). (*Id.* at 7 ¶ 44).^{6/}

11 8. Mr. Ranada operated/represented and/or held himself out variously as
12 “Operations” or “Company representative” of NVM Enterprises in its business dealings. (*Id.*
13 at ECF Nos. 33-4, 33-5, & 33-6).

14 9. Nenita V. Marquez, the registered owner of NVM Enterprises, passed away on
15 October 11, 2019. *See* Plaintiffs’ Amended Opposition . . . [ECF No. 41] at 6 n.2 & at 11
16 ¶¶ 2-4; *see also* Ranada’s Motion, Exhibit “E-4” [ECF No. 58-1].

18 ^{2/} *Id.*

19 ^{3/} *Id.*

20 ^{4/} *Id.*

21 ^{5/} *Id.*

22 ^{6/} In his Answer, Mr. Ranada denied this allegation in the SAC. (ECF No. 45 at 1). But in his
23 motion (ECF No. 58), he asserted that “[t]he ‘N.V.M. of NVM Enterprises’ stand for NENITA VALDEZ
MARQUEZ dba NVM Enterprises . . .” *Id.* (emphasis in original).

10. After her (Ms. Marquez's) passing in 2019, Mr. Ranada has taken over and continued doing business under the business name NVM Enterprises. *See* SAC, Exhibit "6" (Letter dated September 15, 2020 [ECF No. 33-6]); *see also* Ranada's Initial Disclosure, Exhibit "E-6" (Letter dated February, (*sic*) 2021 [ECF No. 54-1]); *Id.* Exhibit "E-7" (Letter dated February 31, 2021 [ECF No. 54-1]); *Id.* Exhibit "E-10" (Letter dated January 15, 2020 [ECF No. 54-1]).

7 **II. LEGAL STANDARD**

8 Summary Judgment is appropriate where the moving party demonstrates the absence
9 of a genuine dispute of material fact and entitlement to judgment as a matter of law. Fed. R.
10 Civ. P. 56(a); *Celotex Corporation v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material
11 when, under the governing substantive law, it could affect the outcome of the case. *See*
12 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about material fact is
13 genuine if "the evidence is such that a reasonable jury could return a verdict for the
14 nonmoving party. *Id.*

15 A party seeking summary judgment always bears the initial burden of establishing the
16 absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323. If the moving party
17 fails to discharge this initial burden, summary judgment must be denied and the court need
18 not consider the nonmoving party's evidence. *Id.* at 322; *see Adickes v. S.H. Kress & Co.*,
19 398 U.S. 144, 159-60 (1970) superseded on other grounds by *Celotex Corporation v. Catrett*,
20 477 U.S. 317 (1986). But if the moving party meets the initial burden, the nonmoving party
21 cannot defeat summary judgment merely by demonstrating "that there is some metaphysical
22 doubt as to the material facts." *Matsushita Elec. Indus. Corp., v. Zenith Radio Corp.*, 475
23 U.S. 574, 586 (1986) (citation omitted); *see also Anderson*, 477 U.S. at 252 (The mere

1 existence of a scintilla of evidence in support of the nonmoving party's position is not
 2 sufficient.). Rather, the nonmoving party must "go beyond the pleadings and by her own
 3 affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,'
 4 designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S.
 5 at 324.

6 Pro se litigants are subject to the same rules at summary judgment as those litigants
 7 represented by counsel. *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010); *see Jacobsen*
 8 *v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1985) ("[P]ro se litigants in the ordinary civil case
 9 should not be treated more favorably than parties with attorneys of record."); *see also*
 10 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we construe pleadings liberally
 11 in their favor, pro se litigants are bound by the rules of procedure.") (citation omitted).

12 **III. ARGUMENT**

13 **A. As the Movant, Defendant Ranada** 14 **Failed to Discharge His Initial Burden.**

15 In his one-page Motion and incantation, Mr. Ranada claims that he "was wrongfully
 16 implicated as a co-defendant on this case . . . as the employer of the plaintiffs" and further
 17 claims being "a victim also." As proof of his not being Plaintiffs' employer and ostensibly
 18 referring to NVM Enterprises as being their (Plaintiffs') employer, Mr. Ranada asserts that
 19 "[t]he 'N.V.M' of NVM Enterprises stand for NENITA VALDEZ MARQUEZ dba NVM
 20 Enterprises and is NOT spelled as my name Feloteo V. Ranada[.]" Finally, Mr. Ranada
 21 attached his unverified supporting documents "[a]s a proof that [he] is only an (OFW)
 22 Overseas Filipino Contract Worker since 1989." Motion (emphasis in original).

23 Mr. Ranada's so-called dispositive Motion is defective, as herein shown.

1 Mr. Ranada failed to show, by any means, that there is no genuine dispute as to any
2 material fact that would entitle him to judgment as a matter of law. Fed. R. Civ. P. 56(a).
3 Other than denying his employer status in relation to Plaintiffs, Mr. Ranada, though it is his
4 initial burden, has offered no argument nor shown any fact nor cited to or shown any legal
5 authority in support of his assertion that he is not one of Plaintiffs' employers. "[A] party
6 seeking summary judgment always bears the *initial responsibility* of informing the district
7 court of the basis for its motion, and [must] demonstrate the absence of a genuine issue of
8 material fact." *Celotex*, 477 U.S. at 323 (emphasis added). "Unsubstantiated allegations carry
9 no probative weight in summary judgment proceedings." *McCoy v. Meyers*, 887 F.3d 1034,
10 1044 (10th Cir. 2018) (citation omitted).

11 While Mr. Ranada submitted some documents together with his motion, he has failed
12 to show or point to an iota of evidence supporting the basis for his asserted lack of genuine
13 dispute regarding the employment/employer issues. Mr. Ranada has simply left it up to the
14 Court and the Plaintiffs to search for and determine evidence that create or show a genuine
15 factual dispute.

16 Having failed to cite to any such evidence, Mr. Ranada's motion for summary
17 judgment should be denied even if something hidden in his proffered records or documents
18 might have supported his claim. *See Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996)
19 (noting that parties identify evidence with "reasonable particularity" because courts are not
20 obligated to "scour the record" to make a determination at the summary judgment stage)
21 (internal quotations omitted); *see also* Fed. R. Civ. P. 7(b)(1)(B) (requiring all motions "state
22 with particularity the grounds for seeking the order.").

1 While the courts construe liberally a *pro se* party's pleadings, however, "[a] district
 2 court does not have a duty to search for evidence that would create a factual dispute." *Bias*
 3 *v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007) (citing *Carmen v. S.F. Unified Sch. Dist.*,
 4 237 F.3d 1026, 1031 (9th Cir. 2002) (holding that it would be "unfair" to the district court to
 5 require it "to search the entire record" if a party fails to "disclose where in the record the
 6 evidence for [the factual claims] can be found"). "A district court lacks the power to act as
 7 a party's lawyer, even for *pro se* litigants." *Id.* Pro se litigants are subject to the same rules
 8 at summary judgment as those litigants represented by counsel. *Thomas*, 611 F.3d at 1150;
 9 *see Jacobsen*, 790 F.2d at 1364 ("[P]ro se litigants in the ordinary civil case should not be
 10 treated more favorably than parties with attorneys of record.").

11 Having failed to discharge his initial burden, Mr. Ranada's motion for summary
 12 judgment should be denied and the Court need not even consider the nonmoving party's
 13 (Plaintiffs) evidence. *See Celotex*, 477 U.S. at 322 (citation omitted).

14 **B. Clearly, as a Person who Acted Directly and/or Indirectly in the Interest**
 15 **of His Co-Defendants, Mr. Ranada is Also an Employer of Plaintiffs.**

16 Mr. Ranada's claim that he is not Plaintiffs' employer is clearly misplaced. In
 17 determining the persons or entities who qualify as "employers" under the FLSA, the statutory
 18 definitions is broadly applied. An "employer" includes "any person" other than labor
 19 organization "acting directly or indirectly in the interest of an employer in relation to an
 20 employee." 29 U.S.C. § 203(d). While an "employee" references "any individual employed
 21 by an employer." 29 U.S.C. § 203 (e)(1). "Employ" is defined to "include[] to suffer or
 22 permit to work." 29 U.S.C. § 203 (g).
 23

1 The FLSA defines an employer-employee relationship broadly. *Torres-Lopes v. May*,
 2 111 F.3d 633, 638 (9th Cir. 1997). “The FLSA’s definition of employee has been called the
 3 ‘broadest definition that has ever been included in any one act.’” *Id.* The definition of
 4 “employer” under the FLSA is not limited by the common law concept of “employer,” but
 5 “is to be given an expansive interpretation in order to effectuate the FLSA’s broad remedial
 6 purposes.” *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1469 (9th Cir.
 7 1983), *abrogated on other grounds by Garcia v. San Antonio Metropolitan Transit Auth.*,
 8 469 U.S. 528 (1985). Under FLSA, an employee may have more than one employer. *See*
 9 *Bonnette*, 704 F.2d at 1469; *see also* 29 C.F.R. § 791.2.

10 As a person who acted directly or indirectly in the interest of Longfeng and/or his co-
 11 Defendants, including NVM Enterprises, in relation to Plaintiffs, Mr. Ranada may be
 12 deemed an employer (or joint employer) of Plaintiffs. As noted above, the FLSA defines
 13 “employer” to include “any person” who acts even “indirectly in the interest of an employer
 14 in relation to an employee.” 29 U.S.C. § 203(d). Therefore, under the FLSA “any person” is
 15 an employer of anyone that it [he/she] “suffer[s] or permit[s] to work.” *Id.* § 203(g).

16 **C. A Genuine Dispute of Material Fact Exists as to Whether Ranada**
 17 **Acted or Held Himself out as Plaintiffs’ Employer By Taking Over and**
 18 **Continuing the Business of NVM Enterprises, a Sole Proprietorship.**

19 Alternatively, NVM Enterprises, a sole proprietorship, arguably has no existence
 20 separate and apart from its registered owner, **Nenita V. Marquez** (hence the initials NVM).
 21 “A sole proprietorship is not a legal entity itself. Rather, the term refers to a natural person
 22 who directly owns the business . . .”). *See Providence Washington Ins. Co. v. Valley Forge*
 23 *Ins. Co.*, 50 Cal. Rptr.,2d 192, 194 (Cal. Ct. App. 1992) (citation omitted). “The designation
 ‘d/b/a’ means ‘doing business as’ but is merely descriptive of the person . . . who does

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business under some other name. *Doing business under another name does not create an entity distinct from the person operating the business.* . . The business is a fiction, and so too any implication that the business is a legal entity separate from its owner. *Id.* at 194-95 citing *Duval v. Midwest Auto City, Inc.* (D.Neb.1977) 425 F.Supp. 1381, 1387, *affd.* (8th Cir. 1978) 578 F.2d 721 (emphasis added).

Ms. Nenita V. Marquez passed away in 2019. *See* attached Exhibit “E-4” (Marquez Certificate of Death)^{7/} to Mr. Ranada’s Motion. After and notwithstanding the death of Ms. Marquez in 2019, Mr. Ranada has taken over and continued doing business without an apparent and appropriate authority to do so and utilizing the defunct business entity, NVM Enterprises. *See* Billing Statement dated September 15, 2020, attached as Exhibit “6” to Plaintiffs’ SAC [ECF No. 33-6];^{8/} *see also* Ranada’s Initial Disclosure, Exhibit “E-6” (Letter dated February, (*sic*) 2021 [ECF No. 54-1]); *Id.* Exhibit “E-7” (Letter dated February 31, 2021 [ECF No. 54-1]); *Id.* Exhibit “E-10” (Letter dated January 15, 2020 [ECF No. 54-1]) (emphasis added).

Thus, Mr. Ranada portends genuine dispute as to the following material facts:

1. Whether NVM Enterprises, a sole proprietorship, survived the death in 2019 of its registered owner Nenita V. Marquez;

^{7/} This Exhibit “E-4” (Certificate of Death), attached to Ranada’s Motion, is not authenticated. However, it is believed to be a part of public record and thus ascertainable. As to the rest of the attached exhibits in Mr. Ranada’s motion, which are not mentioned or referenced here, Plaintiffs lack sufficient information and knowledge to admit or acknowledge the authenticity of the said documents/exhibits, and therefore deny the same.

^{8/} This Billing Statement and other billing statements were provided by Defendants Longfeng Corporation, Guowu Li and Xu Gui Qing in their Initial Disclosures. “A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Fed. R. Civ. P. 10(c).

1 2. If it survived, whether Ranada was authorized or has appropriate authority to
2 continue the business of NVM Enterprises;

3 3. By taking over and continuing the business of NVM Enterprises, a defunct business
4 entity, whether Ranada acted or held himself out as Plaintiffs' employer; and

5 4. Whether by acting directly or indirectly in the interest of either NVM Enterprises
6 or any of his co-defendants, Mr. Ranada is also Plaintiffs' joint-employer and must comply
7 with and subject to liability under the FLSA.

8 Regarding the exhibits attached to Mr. Ranada's motion, Plaintiffs lack sufficient
9 information and knowledge to admit or acknowledge the authenticity of the said
10 documents/exhibits, other than those referenced here, and therefore deny the same.

11 In summary, Ranada has failed to meet his burden under the summary judgment
12 standard of showing the absence of a genuine dispute as to a material fact, i.e., his status as
13 an employer in relation to Plaintiffs, that would entitle him to judgment as a matter of law.
14 *See Fed. R. Civ. P. 56(a); Celotex Corporation v. Catrett*, 477 U.S. 317, 322 (1986).
15 Alternatively, there are still genuine disputes as to material facts, as discussed above,
16 warranting the denial of Mr. Ranada's motion for summary judgment.

17 CONCLUSION

18 For the foregoing reasons, defendant Feloteo V. Ranada's motion for summary
19 judgment dated February 13, 2023 should be denied.

20 Respectfully submitted this 28th day of February, 2023.

21 /s/ Joe Hill

22 **HILL LAW OFFICE**

Attorney for Plaintiffs

23 Abu Yousuf and Md. Rokonnurzzaman